



Federal Communications Commission
Washington, D.C. 20554

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DA 15-1174

Todd D. Gray, Esq.
Gray Miller Persh LLC
1200 New Hampshire Avenue, N.W.
Suite 410
Washington D.C. 20036-6802

Edwin N. Lavergne, Esq.
Donna Balaguer, Esq.
Fish & Richardson P.C.
1425 K Street, N.W.
Suite 1100
Washington D.C. 20005

Dear Mr. Gray, Mr. Lavergne, and Ms. Balaguer:

On August 4, 2015, the National EBS Association ("NEBSA") and the Catholic Technology Network ("CTN")¹ objected to the request made by Choice Communications, LLC ("Choice") for a 180-day extension of its Special Temporary Authorization ("STA"), granted on October 10, 2014,² to operate its commercial wireless broadband service on the unassigned Educational Broadband Service ("EBS") channels C1 through C4 ("C group") and D1 through D4 ("D group") throughout the U.S. Virgin Islands,³ on a non-interfering basis and subject to the condition to cease operations once the Commission has licensed the C and D group channels.⁴ NEBSA and CTN argue that Choice's extension request should be denied because, under Section 27.1201(a) of the Commission's rules, Choice is not eligible to operate on EBS channels; because, in 2008, Choice promised the Commission, NEBSA, and CTN that it would cease operating on the C group and in the D group channels in 2009; and because Choice operated without authorization on the channels for five years from 2009 until it was granted an STA on October 10, 2014.⁵ For the reasons stated below, we deny the NEBSA/CTN Objection.⁶

¹ National EBS Association and the Catholic Television Network, Objection to Application (filed Aug. 4, 2015) (NEBSA/CTN Objection).

² Choice Communications LLC, Application for Special Temporary Authorization, File No. 0003487551.

³ The U.S. Virgin Islands consist of the main islands of Saint Croix, Saint John, and Saint Tomas, and several other surrounding islands.

⁴ Choice Communications LLC, Request for Extension of Special Temporary Authorization, File No. 0006706822 (Mar. 12, 2015) at Attachment 1 (Choice STA Extension Request).

⁵ NEBSA/CTN Objection at 1 and 3.

⁶ We also grant Choice's unopposed motion for extension of time to respond to the NEBSA/CTN Objection. *See* Letter from Phuong N. Pham, Esq., Counsel for Choice Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 17, 2015). While Choice originally sought an extension until September 3, 2015, the response date was extended until September 11, 2015 because of issues in connection with information technology improvements made by the Commission. *See* Non-ECFS Filing Deadlines Further Extended Due to Unavailability of Certain FCC Systems During IT Upgrade Period, DA 15-999 (rel. Sep. 8, 2015). Choice

Although we agree that Choice is not eligible to hold an EBS license,⁷ Choice is eligible, if it makes a satisfactory showing under Section 1.931 of the Commission's rules, to operate these channels under an STA. We determined that Choice had made such a showing in October 2014, when we granted Choice an STA.⁸ Moreover, Choice can receive an extension of the STA if extraordinary circumstances warrant such an extension.⁹ As we discuss below, we conclude that Choice has made a sufficient showing for an extension of its STA to operate on the C and D group EBS channels in the U.S. Virgin Islands.

We also reject your other arguments. With regard to Choice's alleged unauthorized operation of the C and D group channels for five years, we note that Choice's STA was granted without prejudice to any enforcement action resulting from its possible unauthorized operation of facilities on the C and D group channels in the U.S. Virgin Islands.¹⁰ On May 1, 2015, the Enforcement Bureau sent a warning letter to Choice finding that Choice had violated Section 301 of the Act and Section 1.903(c) of the Commission's rules and cautioning that future violations may result in enforcement actions, including monetary forfeitures.¹¹ Under those circumstances, we conclude that Choice's violations of the Commission's rules, while serious, do not affect its qualifications to be a Commission licensee. With regard to promises made by Choice to NEBSA and CTN not to seek an extension of the STA, we regard that as a private matter between the parties which is not binding on the Commission. Furthermore, as described below, we believe circumstances have changed considerably since those promises were allegedly made in 2008.

As mentioned above, we find that Choice has shown that extraordinary circumstances exist in this case and thus we dismiss NEBSA's and CTN's objection. First, Choice has shown that it is operating a fixed wireless broadband service in a remote area where residents have few options for broadband service. Choice states that it provides fixed wireless broadband service to over 7,000 subscribers in the U.S. Virgin Islands, a remote area far removed from the mainland of the United States and which has an unusually low availability of wireline broadband services.¹² Choice also states that it is one of the few companies that covers the entire U.S. Virgin Islands and that offers a fixed broadband alternative to the local phone company.¹³

Second, Choice has shown that it has no other alternative. Choice indicated that to provide fixed wireless broadband service, it uses all of the channels licensed to it under its Broadband Radio Service ("BRS") Basic Trading Area authorization for the U.S. Virgin Islands, which includes BRS Channels 1 and 2, and the E, F, and H group channels and under its license for the commercial EBS A group

filed its opposition on September 10. *See* Opposition to Objection, Choice Communications, LLC (filed Sep. 10, 2015).

⁷ 47 C.F.R. § 27.1201(a).

⁸ File No. 0006439415 (filed Aug. 26, 2014, granted Oct. 10, 2014).

⁹ *See* 47 C.F.R. § 1.931(a)(3).

¹⁰ *See* license for Station WQUT922.

¹¹ Letter from Bruce D. Jacobs, Chief of the Spectrum Enforcement Division to Paul J. Sinderbrand, Counsel for Choice Communications, LLC (dated May, 1, 2015) at 2-3.

¹² Choice STA Extension Request Attachment 1 at 1 and 5.

¹³ Choice STA Extension Request Attachment 1 at 6.

channels, Station WQCY880.¹⁴ In addition, Choice leases excess capacity from Shekinah Network operations on the B group (Station WND210) and the G group (Station WNC892) EBS channels.¹⁵ That leaves only the C and D group channels, which are unlicensed and thus subject to the filing freeze, which has been imposed on applications for new EBS licenses since 1995.¹⁶ Because the Commission has not yet adopted a scheme to license the remaining vacant and available EBS spectrum, no EBS licensee can apply for it and, consequently, Choice does not have the option to lease spectrum from an EBS licensee. Thus, Choice has no option but to seek an STA to meet the broadband needs of the residents of the U.S. Virgin Islands.

Third, Choice has shown that it is spectrum constrained despite having made other extraordinary efforts to meet the demand for fixed wireless broadband service in the U.S. Virgin Islands. Choice stated that when it was faced with increasing demand for fixed wireless broadband service, it changed its business model meet this demand by discontinuing its multichannel video programming distribution service to its subscribers.¹⁷ It also indicated that it started to upgrade its technology to WiMAX, but has now decided to upgrade to LTE.¹⁸ Choice states that without this additional spectrum it will have to cease adding new subscribers and reduce the quality of services available (both speed and access) to existing subscribers.¹⁹

Finally, no party would be harmed by extending the STA. Neither NEBSA nor CTN hold an EBS license in the U.S. Virgin Islands and therefore neither are adversely affected by a grant of Choice's extension request. Choice has also shown that a grant of its extension request will not adversely affect other licensees. Choice stated that over the time that it has been operating on the C and D group channels no complaints of interference have been lodged against it.²⁰ Finally, we note that the STA "is without prejudice to such action as the Commission may take in WT Docket No. 03-66 concerning the licensing of unassigned EBS spectrum" and may be terminated at any time.²¹

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Objection to Application filed by the National EBS Association and the Catholic Technology Network on August 4, 2015 IS DENIED.

¹⁴ Choice STA Extension Request Attachment 1 at 1-2 and 6.

¹⁵ Choice STA Extension Request Attachment 1 at 1-2.

¹⁶ See Notice of Instructional Television Fixed Service Filing Window From October 16, 1995, through October 20, 1995, *Public Notice*, Report No. 23565A (rel. Aug. 4, 1995).

¹⁷ Choice STA Extension Request Attachment 1 at 3.

¹⁸ Choice STA Extension Request Attachment 1 at 3 n.5.

¹⁹ Choice STA Extension Request Attachment 1 at 6.

²⁰ Choice STA Extension Request Attachment 1 at 6-7.

²¹ See license for Station WQUT992.

IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, that the Motion for Extension of Time filed by Choice Communications, LLC on August 17, 2015 IS GRANTED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

cc: Phuong N. Pham, Esq.
 Wilkinson Barker Knauer LLP
 1800 M Street, NW
 Suite 800N
 Washington, DC 20036